

Defendants.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Case No. CIV-07-0284-F

ORDER

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brings this action pursuant to 42 U.S.C. § 1983, alleging violation of his federal constitutional rights. His pleadings are liberally construed.

Magistrate Judge Valerie K. Couch's Report and Recommendation of June 11, 2008, is before the court. ("Report," doc. no. 133.) In her Report, the Magistrate Judge recommends that defendants' motion (doc. no. 98), construed as a motion for summary judgment, be granted and that the claims raised in the Second Amended Complaint be dismissed for failure to exhaust administrative remedies. Alternatively, the Report recommends that the access to courts and deliberate indifference to medical needs claims raised in the Second Amended Complaint be dismissed for failure to state a claim upon which relief can be granted. In addition, the Report recommends that defendants' motion for summary judgment should be granted with respect to plaintiff's Eighth Amendment claim challenging the adequacy of his diet at the Lawton Correctional Facility. Finally, the Report recommends that plaintiff's pending motions at doc nos. 101, 103, 116, 117, 118, and 125 be denied.

The Report advises plaintiff of his right to file an objection to the Report, and plaintiff did so, filing a timely objection on July 1, 2008 (doc. no. 135.) No response has been filed to that objection.

As required by 28 U.S.C. §636(b)(1), the court has reviewed all objected to matters *de novo*. Having concluded that review, and after careful consideration of plaintiff's objections, the record, and the relevant authorities, the court finds that it agrees with the Report of the magistrate judge and that no purpose would be served by stating any further analysis here.

Accordingly, plaintiff's objections are **DENIED**, and the Report and Recommendation of Magistrate Judge Valerie K. Couch is **ACCEPTED**, **ADOPTED**, and **AFFIRMED** in its entirety. Specifically, defendants' motion (doc. no. 98), construed as a motion for summary judgment, is **GRANTED** and the claims raised in the Second Amended Complaint are **DISMISSED** for failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e(a). In the alternative, the access to courts and deliberate indifference to medical needs claims raised in the Second Amended Complaint are **DISMISSED** for failure to state a claim upon which relief can be granted. In addition, defendants' motion for summary judgment is **GRANTED** with respect to plaintiff's Eighth Amendment claim challenging the adequacy of his diet at the Lawton Correctional Facility. Also, plaintiff's motions at doc. nos. 101, 103, 116, 117, 118, and 125 are **DENIED** for the reasons stated in the Report.

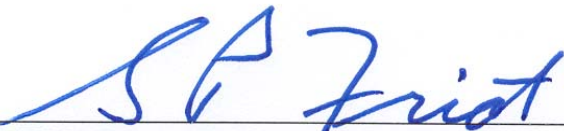
Additionally, on July 1, 2008, plaintiff filed a motion requesting a copy of the Federal Rules of Civil Procedure and seeking information about 54 separately identified rules. No response has been filed to the motion. Included in the motions which the Report recommends denying are complaints by the plaintiff that he continues to be denied access to legal materials. Thus, plaintiff's latest motion

seeking a copy of federal rules is redundant of matters already covered by the Report and by the rulings in this order. (*See*, Report, doc. no. 133, pp. 12-13, stating Magistrate Judge's reasons for denying relief with respect to plaintiff's complaints regarding alleged denial of access to legal materials.) Moreover, the federal rules that govern disposition of plaintiff's claims are Rules 12 and 56. The Report sets out the standards that apply to disposition of claims under Rules 12 and 56, and plaintiff had the benefit of these statements when preparing his objections. Having made no showing of any actual injury, plaintiff's motion at doc. no. 137 is **DENIED**.

Finally, the court notes plaintiff's filing at doc. no. 136. Because of the nature of the document, the document has been filed as a notice rather than as a motion. Regardless, whether the filing is considered a notice, a motion, or a supplement to plaintiff's objections to the Report, the court has reviewed the filing and has determined that nothing stated in it changes any of the rulings contained in this order.

As no claims survive this order, this action is **DISMISSED**.

Dated this 17th day of July, 2008.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE